***United States Court of Appeals***

***for the Second Circuit***


# APPELLANT'S APPENDIX

76-1476

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

UNITED STATES COURT OF APPEALS

Appellee

Docket No. 76-1476

-against-

BRADLEY BRANICK

Appellant

----------X

B
P/S

APPENDIX

JOHN C. CORBETT
Attorney for Appellant Branick
Office & P.O. Address
66 Court Street
Brooklyn, New York 11201

PAGINATION AS IN ORIGINAL COPY

# INDEX

EAL

1

76 CR 269-2

BRANICK, BRADLEY

(LAST, FIRST, MIDDLE)

JUVENILE

Case Filed Mo. 4 Day 13 — No. of Defts 3

Yr. 76 — Docket No. 269 — Def. 2

U.S. MAG. CASE NO. 76 M 753

| T. | SECTION | OFFENSES CHARGED | ORIGINAL COUNTS |
|---|---|---|---|
| 21 | 841(a)(1),846 952(a)960(a)(1) (2), 963 | Did import hashish oil into the USA | 5 |
| 18 | 2 | | |

SUPERSEDING COUNTS

BAIL • RELEASE

Denied — AMT Set — Fugitive — Pers. Recog — PSA

$20,000

Date

Bail Not Made

Status Changed (See Docket)

conditions: 10% Deposit — Surety Bond — Collateral — 3rd Pty Cust — Other

I. KEY DATES & INTERVALS

| ARREST or | INDICTMENT XX | ARRAIGNMENT | TRIAL | SENTENCE |
|---|---|---|---|---|
| U.S. Custody Began | High Risk Date | Information 4-13-76 | 4/23/76 | Trial Set For 6/14/76 | Voir Dire 6/14/76 | Disposition of Charges 10/8/76 |
| Summons Served | Indict. Waived | 1st Plea " | NG G NOL | Trial Began " | Convicted — On All Charges |
| First Appearance 4-9-76 | Superseding Indict/Info | Final Plea | G. Plea W/Drawn | Trial Ended 6/21/76 | Acquitted — On Lesser * Offense(s) |
| In Charging District | | | NG G NOL | | Dismissed — WOP: WP |
| | | | | | On Government's Motion |

MAGISTRATE

| | DATE | INITIAL/NO | | INITIAL/NO | OUTCOME |
|---|---|---|---|---|---|
| Search Warrant: Issued / Return | | | INITIAL APPEARANCE DATE ▶ | | DISMISSED |
| Summons: Issued / Served | | | PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled 4-19-76 / Date Held ▶ | | X HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT |
| Arrest Warrant Issued | 4-7-76 " | VAC/070A " | WAIVED — NOT WAIVED | Tape Number | HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW |
| COMPLAINT ▶ | | | X INTERVENING INDICTMENT | | |

OFFENSE (In Complaint): Unlawfully import hashish oil into the US from Karachi, Pakistan T-21, Sec. 952(a) and T-18, Sec. 2 "

U.S. Attorney or Asst.: Elia Weinbach

ATTORNEYS — Defendant: X CJA — Ret. — Waived — Self — None / Other — FPD — CD

John Corbett, 66 Court St.
Bklyn, NY TR 5-1975

PIERCE 1; TIRA 3

| DATE | PROCEEDINGS | EXCLUDABLE DELAY (a) (b) (c) |
|---|---|---|
| 4-13-76 | Before BRAMWELL, J - Indictment filed | |
| 4/23/76 | Before NEAHER,J.- Case called- deft and counsel present- deft arraigned and enters a plea of not guilty- bail set at $10,000.00 P.R.B. collateralized by deed to deft's house- bail limits extended between N.Y. and Tucson, Arizona- case adjd to 6/14/76 for trial | |
| 5-21-76 | 76 M 841 inserted in CR file | |
| 6-14-76 | Before NEAHER, J - case called - deft & counsel J.Corbett present - suppression hearing begun - ~~trial ordered~~ suppression of statements denied - hearing concluded - trial ordered and Begun - Jury selection begun - Trial contd to June 15, 1976. | |
| 6-15-76 | Before NEAHER,J.- Case called for trial Deft and Counsel present Trial resumed Jury selected and sworn Govt opens Deft opens Trial cont'd to 6-16-76 | |
| 6-16-76 | Before NEAHER, J - case called - deft & counsel present - trial contd - trial to be resumed on June 17, 1976 | |
| 6-17-76 | Before NEAHER,J. - Case called. Deft & counselpresent. Trial resumed. Trial continued to 6-18-76 at 10 A.M. | |

| DATE | IV. PROCEEDINGS (continued) PAGE TWO | V. EXCLUDABLE DELAY Interval (a) | Start/Stop (b) | Ltr. Code (c) | Total Days (d) | For Prior Stat. U.S. |
|---|---|---|---|---|---|---|
| 6-18-76 | Before NEAHER,J.- Case called for trial Trial resumed Deft & counsel rpesent Deft moves for a judgment of accquittal Denied Trial cont'd to 6-21-76 | | | | | A |
| 6-21-76 | Petition for a writ of habeas corpus ad prosequendum filed.(BLANCHARD) Writ issued. | | | | | |
| 6-21-76 | Voucher for expert services filed | | | | | B |
| 6-21-76 | Before NEAHER, J - case called - deft & counsel present - trial resumed - deft moves for Judgment of acquittal - denied - Jury renders a verdict of guilty as to deft Branick on counts 1, 2, 3, 4 and 5; guilty as to counts 1, 4 and 5 as to deft TRA. Bail contd - sentence adjd without date - trial concluded - Jury discharged - motions reserved. | | | | | C D E F |
| 6-22-76 | Govts requests to charge filed. | | | | | |
| 7/23/76 | Notice of motion to set aside the verdict of guilty, filed. Returnable 8/16/76. | | | | | G |
| 10/8/76 | Before NEAHER, J. - Case called. Deft & Counsel present. Deft motion to set aside the verdict - denied. Deft after being convicted by jury is sentenced to : 2 years imprisonment with a special parole term of 5 years on each of counts 1,2,3,4 and 5 to be concurrent. Deft informed of right to appeal. Execution of sentence stayed pending appeal. Bail contd pending appeal provided that deft remains in contact with the Pre Trial Services Agency. Clerk directed to file Notice of Appeal. Financial Affidavit filed. | | | | | H I M |
| 10/8/76 | Judgment & Commitment filed. Certified copies to Marshals and probation. | | | | | N |
| 10/8/76 | Notice of Appeal filed. | | | | | O |
| 10/8/76 | Docket entries and duplicate of notice of appeal mailed to the C of A. | | | | | P |
| 10/18/76 | Record on appeal certified and mailed to the Court of Appeals. | | | | | R |
| 10-21-76 | Acknowledgment received from the court of appeals for receipt of record on appeal. | | | | | |
| 10-28-76 | Voucher for compensation for counsel with Memorandum from J. Neaher (approving attorney's fee) sent to Court of Appeals for authorization of counsel's fee. | | | | | |
| 11-15-76 | Voucher for compensation - filed. | | | | | T |
| 11-15-76 | 4 transcripts filed (dated June 14, 15, 16 and 18, 1976 respectively) | | | | | |
| 11-16-76 | Stenographers transcript filed dated June 17, 1976 | | | | | |
| 12/2/76 | Stenographers transcript dated 6/21/76 filed. | | | | | U |
| 12-9-76 | By Neaher, J - Order filed stipulated by and between the parties that 3 ex. marked as follows (see Order) should be part of the record on appeal etc. | | | | | V |
| 12/13/76 | Two envelopes ordered sealed by Judge Neaher filed and placed in vait. | | | | | |
| 12/13/76 | Court exhibit 2 filed. | | | | | |

TRP:EW:ald
F.#761,489

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 13 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

JEFF PIERCE,
BRADLEY BRANICK and
BARBARA TIRA,

Defendants.

Cr. No.
(T. 21, U.S.C., §§841(a)(1), 846, 952(a), 960(a)(1), 960(a)(2) and 963 and T. 18, U.S.C., §2)

- - - - - - - - - - - - - - - - - - X

THE GRAND JURY CHARGES:

76 CR 269

COUNT ONE

On or about and between the 4th day of April 1976 and the 8th day of April 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendants JEFF PIERCE, BRADLEY BRANICK, and BARBARA TIRA did knowingly, wilfully and unlawfully conspire to import quantities of hashish oil, a Schedule I controlled substance in violation of Title 21, §952(a), §955, §960(a)(1) and §960(a)(2). (Title 21, United States Code, Section 963).

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant JEFF PIERCE committed the following.

O V E R T  A C T

1. On or about the 4th day of April 1976 the defendant JEFF PIERCE flew from Pakistan to John F. Kennedy Airport, Queens, New York.

COUNT TWO

On or about the 4th day of April 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants JEFF PIERCE, BRADLEY BRANICK and BARBARA TIRA did knowingly and intentionally import into the United States from Pakistan a quantity of hashish oil, a Schedule I controlled substance. (Title 21, United States Code, Sections 952(a) and 960(a)(1) and Title 18, United States Code, Section 2).

COUNT THREE

On or about the 4th day of April 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants JEFF PIERCE, BRADLEY BRANICK and BARBARA TIRA did knowingly and intentionally possess with intent to distribute a quantity of hashish oil, a Schedule I controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FOUR

On or about the 8th day of April, 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants BRADLEY BRANICK and BARBARA TIRA did knowingly and intentionally import into the United States from Pakistan a quantity of hashish oil, a Schedule I controlled substance. (Title 21, United States Code, Sections 952(a) and 960(a)(1) and Title 18, United States Code, Section 2).

COUNT FIVE

On or about the 8th day of April 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants BRADLEY BRANICK and BARBARA TIRA did knowingly and intentionally possess with intent to distribute a quantity of hashish oil, a Schedule I controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

A TRUE BILL.

Joseph M. C. McInerney
FOREMAN.

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

THE COURT: Members of the jury, we are now at the stage of the trial where you are about to undertake your final function as jurors. Your duty is a serious and important one. In performing it you actively share with the Court the responsibility of administering justice according to law and the evidence in the case.

Your oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality and, as was emphasized by me when you were selected as jurors, without bias or prejudice for or against the Government or the defendants as parties to this controversy. The case is important to the Government, since the enforcement of the criminal laws is of prime importance to the welfare of the community. Obviously it is equally important to the defendants who are charged with a serious crime and have the right to receive a fundamentally fair trial. The community has an interest in that too.

Let me add, the fact that the Government is a party entitles it to no greater consideration than accorded to any other party to a litigation. By the same token it is entitled to no less consideration. All parties, Government and individuals alike stand as equals before the bar of justice.

Your final role is to decide and pass upon the fact issues in the case. You are the sole and exclusive judges of the facts. You determine the weight of the evidence, you appraise the credibility of the witnesses. You draw the reasonable inferences from the evidence. You resolve such conflicts as there may be in the evidence. I shall later refer to how you determine credibility of witnesses.

My final function is to instruct you as to the law. It is your duty to accept these instructions as to the law and to apply them to the facts as you may find them. With respect to any fact matter, it is your recollection and yours alone that governs. As I have already told you anything that counsel, either for the Government or the defense may have said with respect to the matters in evidence, whether during the trial, in a question, in an argument or in summation is not to be substituted for your own recollection of the evidence; so too anything the Court may have said during the trial or may have referred to during the course of these instructions as to any matter in evidence is not to be taken in lieu of your own recollection.

There are certain principles of law which apply in every criminal case and to which I made reference

and emphasized at the time of your selection as jurors. I repeat them now. The indictment is merely an accusation, a charge. It is not evidence or proof of a defendant's guilt. Each defendant on trial has pleaded not guilty. Thus the Government has the burden of proving the charges against each defendant beyond a reasonable doubt. They do not have to prove their innocence.

On the contrary they are presumed to be innocent of the accusations contained in the indictment. This presumption of innocence was in their favor at the start of the trial, continued in their favor throughout the trial, is in their favor even as I instruct you now and remains in their favor during the course of your deliberations in the jury room. It is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of each defendant beyond a reasonable doubt. The question that naturally comes up is what is a reasonable doubt. The words almost define themselves.

That there is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable

doubt is a doubt which appeals to your reason, your judgment, your common sense and your experience. It is not caprice, whim, speculation, conjecture or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If after a fair and impartial consideration of all the evidence you can confidently and honestly say you are not satisfied of the guilt of a defendant, that you do not have an abiding conviction of his guilt, in sum, if you have such a doubt as would cause you as a prudent person to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt and in that circumstance it is your duty to acquit.

On the other hand, if after such an impartial and fair consideration of all the evidence you can confidently and honestly say you do have an abiding conviction of a defendant's guilt, such a conviction as you would be willing to act upon in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt and under such circumstances it is your duty to convict.

One final word on this subject: reasonable doubt does not mean a positive certainty or beyond all possible

doubt. If that were the rule, few persons however guilty they might be would be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt. Not beyond all possible doubt. I might add further that the requirement of proof beyond a reasonable doubt operates on the whole case and not on the separate bits of evidence. Each individual item of evidence need not be proven beyond a reasonable doubt.

Now, let us turn to the charges against the defendants on trial. The defendants Bradley Branick and Barbara Tira are charged in Count One of the indictment with conspiring to import quantities of a controlled substance. Namely, hashish oil, in violation of certain provisions of Title 21, United States Code. Now, I am going to read Count One to you or reread it.

It states that, "On or about and between the 4th day of April, 1976, and the 8th day of April, 1976, both dates being approximate and inclusive, within the

Eastern District of New York, the defendants -- it refers to the defendant Jeff Pierce, Bradley Branick and Barbara Tira, did knowingly and wilfully and unlawfully conspire to import quantities of hashish oil, a Schedule One contolled substance in violation of Title 21, 1952 (a) and certain other sections of that Title."

Then it goes on to say, "In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant Jeffrey Pierce committed the following overt acts.

"One, on or about the 4th day of April, 1976, the defendant Jeffrey Pierce, flew from Pakistan to John F. Kennedy Airport, Queens, New York."

Now, one of the sections referred to in that count is Title 21, Section 952 (a) and that Federal statute provides and I quote, "It shall be unlawful to import into the customs territory of the United States from any place outside thereof, but within the United States, any controlled substance."

Section 960 provides in substance, "Any person who 1, contrary to SEction 952, the statute I just read, knowingly or intentionally imports a controlled substance, shall be punished as provided in Subsection (b) of this Section.

Now, the Congressional purpose expressed in the Federal Drug Act, as I shall abbreviate it, was to prevent traffic in or improper use of drugs having a substantial and detrimental effect on the health and general welfare of the American people. Now, Section 963 of the Drug Act refers to Count One of the indictment. It reads in pertinent part as follows: "Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment, fine or both."

The word import as used in the Drug Act means: any bringing in or introduction of a controlled substance into this country. The word customs territory of the United States simply means all of the United States which includes the District of Columbia and the District of Puerto Rico.

Four essential elements are required to be proved by the Government, beyond a reasonable doubt, in order to establish the guilt of the defendants of conspiring to import a controlled substance into the United States as charged in Count One of the indictment.

First, that the conspiracy described in the indictment was knowingly and wilfully formed by two or more persons and was executed at or about the time

alleged. Second, that the defendant whose guilt or innocence you are considering knowingly and wilfully became a member of the conspiracy. Third, that the objective of the conspiracy was to commit an unlawful act, that is bring into the United States a controlled substance prohibited by law. Fourth, that at least one of the persons involved committed one of the overt acts, that is knowingly did something in furtherance of the conspiracy.

The indictment as I have said, charges that the conspiracy began on or about April 4, 1976, and continued to on or about April 8, 1976. The exact dates are not critical. If you find beyond a reasonable doubt that the conspiracy charge existed at any time during that period, that is sufficient.

Now, what is a conspiracy? A conspiracy is simply a combination of two or more persons, by concerted action, to accomplish some unlawful purpose or to accomplish some lawful purpose by an unlawful means. So, a conspiracy is referred to as a kind of partnership in criminal purposes, in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey or disregard the law.

Mere similarity of conduct amongst various persons, however, and the fact they may have associated with each other and may have assembled and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. However, the evidence in the case need not show that the members entered into any expressed or formal agreement: or that they directly by word, spoken or in writing, stated between themselves what their objective or purpose was to be or the details threof or the means by which the objective or purpose was to be accomplished. What the evidence in the case must show, beyond a reasonable doubt, in order to establish proof that the conspiracy existed is that the members in some way or manner or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

In this case, as I have told you, Count One of the indictment charges a conspiracy was formed amongst Jeff Pierce, who is named as a defendant in the indictment, but is not here on trial, and the defendants Bradley Branick and Barbara Tira who are on trial. A person cannot conspire with himself. Then, therefore, you cannot find any of the defendants on trial guilty of

the charge in Count One unless you find, beyond a reasonable doubt, that one or both of them participated in the conspiracy as charged with Jeff Pierce. In that connection, the fact that Jeff Pierce testified that he plead guilty to Count One, the conspiracy count, may not be considered by you as proof of the existence of the conspiracy charge or that either of the defendants were members of it. A conspiracy comes to an end when all the alleged co-conspirators have been arrested.

A statement made by one of them after the conspiracy is over is not binding upon any person charged with membership. You are to give no weight whatsoever to Mr. Pierce's plea of guilty, either with respect to the existence of a conspiracy as alleged or the guilt of the defendants on trial. Furthermore, as I have said, a person cannot conspire with himself and therefore you cannot find either of the defendants guilty unless you find beyond a reasonable doubt that one or both of them participated in a conspiracy with Mr. Pierce, based upon the evidence as to their statements and conduct.

This brings us to the second element of whether one or both of the defendants on trial was or became a member of the conspiracy charged in Count One. One may

become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of the conspiracy, but happens to act in a way which furthers some object or purpose of a conspiracy, does not thereby become a conspirator. Before the jury may find that a defendant or any other person has become a member of a conspiracy the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or another person who is claimed to have beem a member, wilfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

Now, that instruction has used the word knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason. To act or participate wilfully means to act or participate voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done: that is to say, to act or participate with the bad purpose, either to disobey or disregard the law.

So, if the defendant, having the understanding of

the unlawful character of the plan, knowingly encourages, advises or assists for the purpose of furthering the undertaking or the scheme, he thereby becomes a wilful participant, a conspirator. One who wilfully joins in an existing conspiracy and is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, you should consider the actions and declarations of all of the alleged participants, including Jeffrey Pierce. However, in determining whether a particular defendant was a member of a conspiracy, if any, you should consider only his or her acts and statements. A defendant cannot be bound by the acts or declarations of another participant unless it is established that a conspiracy existed and that he was one of its members. Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed and that a defendant was one of its members, then the statements thereafter knowingly made and the acts thereafter knowingly done by the other person, likewise found to be a member, may be considered by the jury as evidence in the case as to the defendants found to have been a member, even though the statement and the act may have occurred in

the absence and without knowledge of the other defendant; provided such statements and acts were knowingly made and done during the continuance of such conspiracy and in furtherance of some object of the conspiracy.

Otherwise, any admission or incriminatory statement made or done outside of court by any one person may not be considered as evidence against any person who was not present and did not hear the statement made or see the act done. Therefore, statements of any conspirator which are not in furtherance of a conspiracy or made before its existence , or after its termination, may be considered as evidence only against the person making them.

In the consideration of the evidence in the case, as to the offense of conspiracy charged, you should first determine whether or not the conspiracy existed as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not the accused defendant wilfully became a member of a conspiracy. If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was wilfully formed and that a defendant wilfully became a member of the conspiracy, either at its inception or afterwards,

then there may be a conviction, even if the conspirators may not have successfully accomplished any common object and or purpose and in fact may have failed to do something. Any defendant's participation moreover is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator, even though he may have played only a minor part in the conspiracy.

This brings us to the third essential element namely, whether the object of the conspiracy was to bring into the United States a prohibited controlled substance. If you find, beyond a reasonable doubt, that the substance contained in the several plastic bags admitted into evidence as Government's exhibits is in fact hashish oil, then I instruct you as a matter of law that that substance would be a controlled substance within the meaning of the Drug Act, the importation of which is prohibited by law.

This brings us to the fourth element, the commission of an overt act in furtherance of a conspiracy charged. You will recall as I said before that the indictment in Count One alleges as an overt act that on or about April 4, 1976, Jeffrey Pierce flew from Pakistan to John F. Kennedy Airport, Queens, New York. Although the gist of the offense of the conspiracy is

the unlawful agreement between two or more individuals, nonetheless you will have to find beyond a reasonable doubt that Jeff Pierce's travelling from Pakistan to New York was in furth[illegible]ance of an existing conspiracy and not an unrelated individual act. To sum up with respect to Count One, as the evidence stands in this case, in order to find a conspiracy you must find, beyond a reasonable doubt, that one or both of the defendants on trial and Jeff Pierce, the third alleged co-conspirator, wilfully conspired or agreed that one or more of them would import hash oil into the United States concealed in such a manner as to evade discovery by the customs authority. If you do not find that there was such an agreement or understanding, then you cannot find that a conspiracy existed.

Whether a defendant knowingly or intentionally participated presents an issue of fact. Proof of requisite knowledge and intent on the part of an alleged conspirator need not be made by direct evidence. By direct evidence is meant the testimony of a person who claims to have knowledge derived through the senses: for example, an eyewitness. The existence of a conspiracy and the defendant's participation in it may be shown by circumstantial evidence: by which we mean the existence

of facts and circumstances from which the existence of other facts and circumstances may reasonably be inferred. As I have said, explicit words are not required to indicate an association or attachment to a conspiracy. The essence of the conspiracy is the common plan or design.

In determining whether there was an unlawful agreement, you may judge the acts and conduct of the alleged co-conspirators which are done to carry out an apparent criminal purpose. These include discussions and conversations among themselves to that end. If you find circumstances of secrecy, or attempts to conceal the true nature of the transactions, these may be considered by you as circumstantial evidence of a criminal intent.

However, mere association of a defendant with co-conspirator or conspirators does not establish participation in a conspiracy if you find one did exist. Nor is knowledge of the illegal acts of others sufficient. Thus, the mere existence or association or friendship between a defendant and an alleged co-conspirator by itself would not be sufficient to establish that defendant's participation in the conspiracy. Likewise, as I said before, if one acts in a way which furthers the conspiracy, but has no knowledge of it, he does not

thereby become a participant. What is necessary, as I already said, is that the defendant must participate in the conspiracy with knowledge of at least some of its purposes and with the intent to aid in the accomplishment of its unlawful purpose. A single act may be enough to draw a defendant within the ambit of a conspiracy, provided you are convinced beyond a reasonable doubt that the defendant knew of the conspiracy and associated himself with it.

Now, let us turn to Count Two of the indictment, which charges the defendants on trial with knowingly and intentionally importing into the United States from Pakistan, a quantity of hashish oil, in violation of the Federal Drug Act. Now, let me read Count Two "Count Two charges on or about the 4th day of April, 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants Jeffrey Pierce, Bradley Branick and Barbara Tira did knowingly and intentionally import into the United States from Pakistan a quantity of hashish oil, a Schedule One controlled substance, and certain sections of the United States Code are therein referred to. Before either of the defendants on trial may be convicted on the charge of importing in Count Two of the indictment, the Government must establish beyond a reasonable doubt the

following two essential elements:

First, that on or about April 4, 1976, a quantity of hashish oil was brought into the United States concealed on the person or effects of Jeff Pierce. Second, that a defendant on trial knew that the hashish oil was being illegally imported by Pierce and that said defendant knowingly and intentionally aided and abetted its importation.

I've already explained the meaning of importation to you and that to act knowingly is to do so voluntarily and intentionally and not because of mistake, accident or other innocent reason. I've also explained that to act intentionally means to do so with specific intent to do something the law forbids or with specific intent to fail to do something the law requires to be done that is to act or participate with the bad purpose either to disobey or disregard the law.

There is evidence in this case that on April 4, 1976, hashish oil was found in a suitcase carried by Jeffrey Pierce who arrived alone from Pakistan on that date. You may wonder why the defendants on trial are also charged with that offense. The answer to that question is found in another United States criminal statute known as the Aiding and Abetting Statute, on

which the Government relies in charging the defendants on trial under Count Two.

That Statute, Section 2 of Title 18, United States Code, reads as follows; "Whoever commits an offense against the United States or aid, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

B, whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States is punishable as a principal.

Under the foregoing statute it is not necessary for the Government to show that a defendant personally committed the crime charged. A person who aids and abets another person to commit an offense is just as guilty of the offense as if he himself committed every act related to it. Accordingly, you may find a defendant on trial guilty of the substative offenses of importing if you find beyond a reasonable doubt, as the Government charges, that Jeff Pierce committed the offense and that a particular defendant aided and abetted him.

In order to find that a defendant aided and abetted, you must be satisfied, beyond a reasonable doubt, that that defendant in some way knowingly

associated himself or herself with the criminal venture in a meaningful way. That he or she knowingly participated in it as something he or she wished to bring about and by some action to make it succeed.

In other words, if one, fully aware of what he is doing plays a significant role in furthering a transaction prohibited by law, he is an aider and abettor, and as such he is equally guilty with the person who directly performed the illegal acts which consitute the crime. One final word on the subject of aiding and abetting -- the mere presence of a defendant at a place where the crime may have been committed or planned or where events which may be part of a conspiracy may have transpired, is not a sufficient basis to find that such a defendant aided and abetted in the commission of a crime or knowingly participated in the conspiracy and intended to further its aims.

The law requires proof beyond a reasonable doubt that a defendant knowingly played a part as an aider and abettor. Mere knowledge or association does not make out an offense of aiding or abetting.

Now, let us turn to the third count in the indictment which charges the defendants on trial with knowingly and intentionally possessing, with intent to

distribute, a quantity of hashish oil at John F. Kennedy International Airport on April 4, 1976. Count Three, which I shall read to you, charges, "That on or about the 4th day of April, 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants Jeffrey Pierce, Bradley Branick and Barbara Tira did knowingly and intentionally possess with intent to distribute a quantity of hashish oil, a Schedule One Controlled Substance in violation of the law"and there are listed certain statutory references. Now, before either of the defendants on trial may be convicted of a charge of possession in Count Three, the Government must establish, beyond a reasonable doubt, the following essential elements.

First, that on or about April 4, 1976, Jeffrey Pierce had in his possession, knowingly and intentionally, a quantity of hashish oil with intent to distribute it. Second, that one or both of the defendants on trial knowingly and intentionally aided and abetted Jeffrey Pierce in that possession with such intent. Again, as in the case of the charge in Count Two of the indictment, if the evidence tends to show it was Jeff Pierce who alone arrived at John F. Kennedy Airport on April 4, 1976, with a quantity of hashish oil concealed

in the suitcase, again, the Government relies on the aiding and abetting statute in charging the two defendants on trial with possession of that quantity of hashish oil with intent to distribute it.

The same aiding and abetting statute applies to the charge in Count Three as I've explained to you with respect to Count Two. However, there are some terms which warrant explanation. The term possession has two meanings. Actual and constructive. Possession is actual when a person has a thing in his manual or physical control. Possession is constructive when a person, although not having an article in his possession, nevertheless has the power to control its disposition; that is by directing its transfer to someone else, setting a price for the sale and so forth.

The term intent to distribute simply means having the intention of transferring or selling the hashish oil at some point to someone else.

Again, you will have to decide whether either or both of the defendants on trial knowingly and intentionally aided and abetted Jeffrey Pierce in his possession of the hashish oil on April 4, 1976, with intent to distribute it. If so, then understanding the aiding and abetting statute, one or both of the defendants on

trial may be found guilty as a principal if you are satisfied by the proof, beyond a reasonable doubt.

Now, let us turn to Count Four of the indictment which charges the defendants on trial with knowingly and intentionally importing into the United States, from Pakistan, a quantity of hashish oil, on or about April 8, 1976.

Now, Count Four, which I will read to you charges that, "On or about the 8th day of April, 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants Bradley Branick and Barbara Tira did knowingly and intentionally import into the United States from Pakistan, a quantity of hashish oil, A Schedule One Controlled Substance." Again, there are statutory references.

Now, before either defendant may be convicted on the charge in Count Four, the Government must establish beyond a reasonable doubt, the following essential elements: first, that on or about April 8, 1976, at John F. Kennedy International Airport, a quantity of hashish oil was brought into the United States, concealed in the suitcase carried by the defendant Barbara Tira. Second, that one or both of the defendants on trial knowingly and intentionally participated in bringing

about the importation of that hashish oil.

The same principles and definitions already explained apply to Count Four also. I will therefore turn immediately to Count Five which charges the defendants on trial with knowingly and intentionally possessing a quantity of hashish oil, with intent to distribute it on or about April 8, 1976.

Now, Count Five reads that: "On or about the 8th day of April, 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants Bradley Branick and Barbara Tira did knowingly and intentionally possess with intent to distribute a quantity of hashish oil, a Schedule One Controlled Substance." Again, there are statutory references. Again, the same principles and definitions that are applicable to Count Three apply to Count Five.

Now, before you may find, incidentally, either defendant guilty of possession of the hashish oil, you must find that the defendant had knowledge of its presence. That the defendant you are considering exercised some form of dominion and control over it and intended to exercise such control.

A defendant may be proven guilty, as I said before, by either direct or circumstantial evidence.

The law makes no distinction as to the weight to be given to either direct or circumstantial evidence. Circumstantial evidence, if believed, is of no less value than direct evidence: for in either case you must be convinced, beyond a reasonable doubt, of the guilt of a defendant. In this case the Government relies upon both the direct and circumstantial evidence.

Now, in this case it is obvious that as to all four counts, other than the first count of conspiracy, the critical question is whether the defendants on trial knew that the substance in both suitcases or one or both suitcases was hashish oil. That element of actual knowledge that either Jeffrey Pierce or Barbara Tira was bringing and importing that substance into the United States is an essential element of each of the offenses charged, both as to importing and as to possession.

You may not find either defendant guilty of any count unless you find, beyond a reasonable doubt, that he or she knew the hashish oil was being imported into the country. The fact of knowledge as I have indicated may be established by direct or circumstantial evidence, just as any other fact in the case.

Knowledge may be proven by a defendant's conduct,

since we have no way of looking into a person's mind directly. Here the defendant Tira by her not guilty plea has in effect denied knowledge of the hashish oil allegedly found in her suitcase.

Now, in this connection, bear in mind one may not wilfully and intentionally remain ignorant of facts, important and material to his conduct in order to escape the consequences of the criminal law. If you find from all the evidence, beyond a reasonable doubt, that the defendant Tira deliberately and consciously tried to avoid learning that there was such a substance in the suitcase she was carrying, in order to be able to say when she was apprehended that she did not know, you may treat this deliberate avoidance of positive knowledge as equivalent of knowledge.

In other words, you may find the defendant acted knowingly if you find that either she actually knew she had hashish oil or that she deliberately closed her eyes to what she had every reason to believe was the fact.

I should like to emphasize again, members of the jury, the requisite knowledge cannot be established by mere negligence or even foolishness on the part of a defendant.

Now, during the course of the trial the Court permitted evidence of certain claimed prior similar acts to be introduced. At that time I pointed out to you that the defendants were not on trial for what was alleged to have been done and claimed to have been done in 1972 or in 1973. This indictment pertains solely to claimed criminal conduct occurring in 1976.

So, evidence that an act was done at one time or on one occasion is not any evidence or proof whatever that a similar act was done at another time or and another occasion: that is to say that a defendant may have committed an earlier act of a like nature may not be considered by you in determining whether the accused committed any act charged in the indictment. Nor may evidence of an alleged earlier act of like nature be considered for any other purpose, whatever, unless you the Jury first find that the other evidence in the case, standing alone, establishes, beyond a reasonable doubt, that the accused did the particular act or acts charged in a particular count of the indictment. Then, after deliberation, if you should find beyond a reasonable doubt that from the other evidence in the case that the accused did the acts charged in the particular count under deliberation, then you may consider evidence as

to alleged earlier acts of a like nature in determining the state of mind or intent with which the accused did the act in the particular count.

Where proof of an alleged earlier act is established by evidence which is clear and convincing you may, but are not obliged to draw the inferences and find that in doing the act charged in the count under deliberation the accused acted wilfully and with specific intent and not because of mistake or accident or other innocent reason.

In this case, in addition to the evidence regarding prior or similar acts that I have just mentioned, the Government introduced through its witnesses evidence of claimed statements made by the defendants following their arrest. Evidence relating to any statement or act or admission claimed to have been made or done by the defendant outside of court and after a crime has been committed should always be considered with caution and weighedwith great care and all such evidence should be disregarded entirely unless the evidence in the case convinces you beyond a reasonable doubt, that the statement or act or admission is knowingly made or done.

As I have said before, an act is done or an

omission is performed knowingly if it is done voluntarily and intentionally and not because of mistake, accident or other innocent reason. In determining whether any statement or act or omission claimed to have been made by a defendant outside of court and after a crime was committed, was knowingly made or done, you may take into consideration the age, sex, training, education, occupation and physical and mental condition of the defendant and the treatment given the defendant while in custody or while under interrogation as shown by the evidence in the case and also all other circumstances in evidence surrounding the making the statement or act or omission, including whether, if the statement or act or omission was made or done, the defendant knew or had been told and understood that he or she was not under an obligation or required to make the statement or to do some act claimed to have been made or done by him or her, that any statement, act or omission which might be made, which will be used against a defendant in the court, the defendant is entitled to assistance of counsel before making any statement, either orally or in writing and that if the defendant is without money or means to retain counsel of his own choice, an attorney would be appointed to

advise and represent the defendant, free of cost or obligation.

If the evidence in the case does not convince you, beyond a reasonable doubt, that the admissions or confession was made intentionally and voluntarily, you should disregard it entirely. On the other hand if the evidence in the case does show, beyond a reasonable doubt, that an admission or confession was in fact voluntary and intentionally made by a defendant, you may consider it as evidence in the case against the defendant who made it.

It must be apparent to you that the Government and defense are in sharp divergence and critical issues of fact and credibility are raised. You are called upon to decide the facts in issue here. How do you decide this?

Now, I think you understand why at the start of the trial I suggested it would be desirable and important for you not only to listen, but to look at the witnesses as they testified. Your determination of the issue of credibility very largely must depend upon the impression that a witness made upon you as to whether or not he was telling the truth or giving you an accurate version of what occurred. I often say to

Jurors when you walk into the courtroom and sit in the jury box, while the trial is going on and later when you are deliberating in the jury room, you bring with you your common sense, good judgment and your experience with you. You decide whether or not a witness was straightforward and truthful: whether he attempted to conceal anything: whether he has a motive to testify falsely: whether there is any reason why he might color his testimony.

In other words, what you try to do, to use the vernacular, is to size a person up just as you would do, as I said before, in any important matter where you were undertaking to determine whether or not a person is truthful, candid and straightforward.

In passing upon the credibility of a witness, you may also take into account inconsistencies or contradictions as to material matters in his own testimony, or any conflict with that of another witness.

A witness, however, may be inaccurate, contradictory or even untruthful in some respects, and yet be entirely credible in the essentials of his testimony.

The ultimate question for you to decide in passing upon credibility is did the witness tell the truth here before you as to essential matters.

Aside from the general considerations regarding the evaluation of testimony I have just mentioned, there are some special witness instructions required in this case.

As you are aware the Government contends that through the testimony of a witness, Jeff Pierce, it has in addition to circumstantial evidence offered direct proof of conspiracy. Mr. Pierce is named in the indictment as one of the co-conspirators. By his own admission on the stand he must regarded as an accomplice in the offense with which the defendants are on trial are charged.

An accomplice is one who wilfully associates himself with the commission of a crime. The law does not prohibit the use of accomplice testimony and whether you approve or disapprove of its use should not enter into your consideration of the case. In certain types of cases the Government is, of necessity, frequently compelled to rely upon the testimony of an accomplice. Otherwise it would be difficult to detect or prosecute some wrongdoers and that is particularly true with conspiracy cases.

Often the Government has no choice in the matter. It must take witnesses to the transactions as they

are. There is no requirement in the Federal Court that the testimony of an accomplice be corroborated. A conviction may rest on the uncorroborated testimony of such a witness, if he is found credible and reliable. However, the testimony moreover of such a witness should be viewed with great caution and scrutinized very carefully. Nevertheless it does not follow, because a person has acted or been a participant in a crime or is an accomplice in that he's not capable of giving a truthful version of what occurred. You should ask yourselves these questions:

Did Pierce give false testimony or color his testimony contrary to fact because he has not been prosecuted on the remaining charges in the indictment or believes that his cooperation may result in more lenient treatment. If you find his testimony was deliberately untruthful, you should unhesitatingly reject it. On the other hand, if upon after a cautious and careful examination you are satisfied he has given a truthful version of the essential events, beyond a reasonable doubt, there is no reason why you should not accept it.

You also heard in this case the testimony of Robert Henderson, a Government chemist concerning the

nature of the substance in the plastic bags admitted into evidence as Government's Exhibits. The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call expert witnesses. Witnesses, who by knowledge, skill, training or education have become expert in some art, science, profession, or vocation may state an opinion as to relevant and material matters in which they profess to be experts and may also state the reason for the opinion.

You may consider the expert opinion received in evidence that the substance in the bags is hashish oil and give it such weight as you may think it deserves. If you should decide that the opinion of Mr. Henderson is not based upon sufficient knowledge, skill, experience, training or education, or if you should conclude that the reasons given in support of the opinion are not sound or that, the opinion is outweighed by other evidence, then you may disregard the opinion entirely. If you decide that the opinion of Mr. Henderson is based upon sufficient knowledge, skill, experience, training or education and the reasons given in support of the opinion are sound, then you may credit his testimony concerning the nature of the substance which the

Government contends is the hashish oil found in the suitcase in evidence and referred to in the indictment.

The fact that some of the Government witnesses, I think probably only one of the Government witnesses, in this case was a Government employee or police officer does not entitle his testimony to any greater weight or consideration than afforded to any other witness in the case. There were either one or two customs officers and they are in the same equavalent role. You evaluate their credibility the same way you do that of any other witness. If you find that any witness and that applies alike to Government and defense, wilfully testified falsely as to any material fact you have a right to reject the testimony of that witness in its entirety. You may accept that part or portion which commends itself to your belief as credible.

Now, the law permits but does not require a defendant to testify in his own behalf. The defendant Bradley Branick has taken the witness stand. Obviously he has a deep personal interest in the results of his prosecution.

Interest creates a motive for false testimony and in appraising his credibility you may take that into account. However, it by no means follows that simply because a person has a valid interest in the

end result that he is not capable of telling a truthful, candid and straightforward story. It is up to you to decide whether the defendant's interest has affected or colored his testimony.

The defendant Barbara Tina has not testified in this case. That is her absolute right and in no respect may be considered by you as any evidence against her or as a basis for any presumption or inference unfavorable to her. You must not permit that fact to weigh in the slightest degree against her, nor should it enter into your deliberations or discussions.

The evidence in the case consists of testimony of all witnesses except that which I have instructed you to disregard and all exhibits received in evidence. All evidence, whether or not I have referred to it in these instructions or counsel have mentioned it in their summations is important and must be considered by you. If per chance any reference to testimony that is not in agreement with your recollection and I have stated this before, you are to disregard such references and I emphasize this as strongly as I can. Always it is your recollection and yours alone that governs and you must unhesitatingly reject any statement as to a fact, whether made by the Court or counsel which does not coincide

with your own recollection of the evidence.

Bear in mind that the guilt or innocence of the defendants on trial must be determined solely upon the evidence presented against them or the lack of evidence. You must remember, as I have said, that each defendant is entitled to have your consideration as though he or she were alone on trial.

Now, where two or more persons are charged with the commission of a crime, the guilt of one defendant may be established without proof that all of the defendants perpetrated every act constituted in the offenses charged. Now, the jury must give separate consideration, as I have said, to each individual defendant and to each separate charge against him or her. Each defendant is entitled to have his case determined from his own conduct and from the evidence that may be applicable to him. During the course of the trial the attorneys at various times have objected to certain questions and moved to strike answers and have taken other procedural positions before you. These are matters of technical procedure that are the proper concern of attorneys and should not concern you. I instruct you are not to draw any inference from the fact that an attorney may have made objections and motions before you during the trial.

convicted to enter into your deliberations or to influence your verdict in any way.

Your duty is to decide the case solely and only upon the evidence and in the event of a conviction the duty of imposing sentence rests solely with the Court.

Each Juror is entitled to his or her own opinion, but each should, however, exchange views with his fellow Jurors.

That is the very purpose of jury deliberation, to discuss and to consider the evidence; to listen to the arguments of fellow Jurors:

To present your individual views; to consult with one another; and to reach an agreement based solely and wholly on the evidence, if you can do so without violence to your own individual judgment.

Each one of you must decide the case for himself and herself after consideration with his or her fellow Jurors.

But you should not hesitate to change an opinion which, after discussion with your fellow Jurors, appears to be erroneous.

However, if after carefully considering all the evidence, and the arguments of your fellow Jurors, you entertain a conscientious view that differs from others,

you are not to yield to your judgment simply because you are outnumbered or outweighed.

Your final verdict must reflect your conscientious view as to how the issue should be decided. The charge here, as I have said, is a serious one. The just determination of this case is important to the public; it is equally important to these defendants.

Under your oath as Jurors you must decide the case without fear or favor and solely, as I have stated any number of times, in accordance with the evidence and the law.

If the Government has failed to carry its burden as to a defendant, your sworn duty is to acquit. If it has carried its burden as to a defendant, you must not refrain from your sworn duty, you must convict.

Now, members of the Jury, to sort of simplify your task, because there are two defendants and five counts, I prepared a special form of verdict in which each count is briefly summarized and the defendant's name under each and the words guilty or not guilty, which you may follow as your outline during your deliberations.

I am going to hand the original to the Foreman, Juror Number One and I have extra copies for each one of

you to have in the jury room. There will be twelve copies to go with the original.

I am going to let you retire for a moment while I give counsel the opportunity to inform me, out of your presence, whether I've misspoken anything in the course of these instructions or omitted anything that should have been spoken. Then I'll turn these papers over to you, you may have a copy of the indictment with you in the jury room. I'll give that to the Foreman also.

Now, while I think of it, many exhibits have been admitted here. There is much testimony recorded by the reporters. My suggestion is that when you begin your deliberations, you try to determine amongst yourselves, perhaps following this outline, count by count and if there are any issues that are trouble to you and you feel it is important and that it may be resolved perhaps by seeing an exhibit or if necessary by having some testimony reread. Remember, in requesting testimoney it would be preferable not to ask for the whole testimony of someone to be reread, but just that particular portion which may satisfy some particular question that has come up.

The same with respect to any exhibit in evidence.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

They are all in evidence here and we're not trying to keep them from you. It's important in an effort to have you focus on your deliberations, on specific matters and take them one at a time.

Now, the way you communicate with the Court, you will be provided with a pad and pencil. You write a note in which if you have a question, write it out and if you have some other communication, write that out. You hand it to the Marshal, knock on the door and he'll give it to the Court. We will convene and counsel will confer about the response to be made to your inquiry. So, you will take a five-minute recess while I speak to counsel.

(Jury excused.)

MR. WEINBACH: I have no objection at all to the charge. I just want to ask the Court, I take it you are amenable if the Jury could be kept at least until a reasonable hour?

THE COURT: I will. It may be that we'll send them out to get something to eat and have them come back. Now, I have to go to a meeting of the judges at 5:00 o'clock. That usually lasts for an hour. So, I hope they won't come in with questions during that time. One can't guarantee that. Do we have any left over, I

there is aiding and abetting one another with respect to the April 8, 1976 matter.

THE COURT: I'll make that clear for them.

(Following occurred in open court.)

THE COURT: To overcome any possible confusion in your mind, you may recall that I did not repeat the aiding and abetting charge or instruction I should call it as given it to you here simply because I pointed out when we came to the other counts dealing with the events on April 8, 1976, the same principles would apply there. That is you will recall in this instruction I said the suitcase carried by Jeff Pierce, because I was then talking about Count Two of the indictment which charges Jeffrey Pierce with having brought in the suitcase, imported it, in other words, on April 4, 1976. Count Four and Five deals with the events on April 8, 1976 and aiding and abetting applied to those counts as well. Do you understand that? You follow me? There seems to be someone with a doubtful look?

FOREMAN: Will you say that again?

THE COURT: I'm saying you remember that you are guided by the special form of verdict. Count One is the conspiracy count. Count Two is importing a quantity of hashish oil on or about April 4, 1976. That is the

suitcase that Mr. Pierce carried in. Count Three is possessing on that same date. The same hashish oil in the same suitcase that Jeff Pierce carried.

Count Four is importing a quantity of hashish oil on or about April 8, 1976. That was the second arrival, the arrival in which defendants Branick and Tira came through customs. Do you understand that, aiding and abetting applies to that count and also to the possession of April 8, 1976. It applies right through. Do you follow me? You still seem to have a question written on your face, if not in your mind. Let me put it this way.

If you were satisfied from the evidence, this is just a hypothesis, I'm not suggesting that the evidence shows it, but if you were to find from the evidence that when Miss Tira came in with a bag, on April 8, 1976, containing the second portion of the hashish oil, let's put it that way, and if you also found, again hypothetically, that the defendant Branick had something to do with that mode of bringing it in, utilizing another person to carry it in, if he were the one who induced that person or commanded her or aided her, in other words, bringing it about, he could be an aider and abettor if there is evidence indicating he

knowingly participated in it. Do you understand? That's what I mean when I say aiding and abetting applies.

Similarly, if you turn it around, if the evidence satisfies you that Branick was an actor or participant in whatever it was, in the negotiations, procuring this hashish oil and utilized Miss Tira to carry it in, she could be an aider and abettor to the importation, as I say, if you are satisfied, provided you found that she knowingly and willfully participated in that, even though she wasn't a principal. But, she simply agreed, she would have it in her suitcase and bring it in.

Do you understand that? That's what I'm trying to make clear. But, it is up to you to find out whether the evidence established those relationships beyond a reasonable doubt.

Now, are you ready to return and resume your deliberations?

MS. SOLLEDER: May we approach the side bar before the Jury goes out?

(Side-bar.)

MS. SOLLEDER: It seems to me in view of the example you gave, a similar example should be given with respect to Pierce.

THE COURT: Pierce is of course not on trial.

That's the problem.

MS. SOLLEDER: But they're charged with aiding and abetting him four days before.

THE COURT: I'm assuming they understand that. They are the persons on trial. I wanted to make it clear to the Jury, there seems to be a question on one of their faces, at least one Juror, as related to the other counts. That's what I was trying to clear up. If there's any confusion in their minds I want it clear that they understand.

MR. CORBETT: Does your Honor plan to stay for a verdict?

THE COURT: I'm going to let them return and deliberate. We will wait and see.

(Following occurred in open court.)

THE COURT: All right, members of the Jury, you may return to your deliberations.

(Whereupon, the Jury returned to their deliberations at 8:40 p.m.)

THE CLERK: Jury note, marked Court Exhibit 11.

(Whereupon, the court recessed.)

(Whereupon, the court resumed.)

(Time noted, 8:50 p.m.)

(Jury not present.)

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